

DEPT OF TRANSPORTATION  
RDC 218

10-2-4043

**Docket OST-96-1638**

Communications with respect to this document should be sent to:

May 7, 2009

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

**Motion of**

**DELTA AIR LINES, INC.**

**For Confidential Treatment  
Under Section 302.12**

**Docket OST-96-1638**

**MOTION OF DELTA AIR LINES, INC.  
TO WITHHOLD INFORMATION  
FROM PUBLIC DISCLOSURE**

Pursuant to 14 CFR 302.12, Delta Air Lines, Inc. ("Delta") hereby files this Motion to Withhold From Public Disclosure certain commercially and competitively sensitive information contained in Delta's Form 41 Schedule B-7, Airframe and Aircraft Engine Acquisitions and Retirements, for the quarter ending March 31, 2009. Delta is required to provide the confidential information contained in Schedule B-7 pursuant to Part 241 of the Department's Economic Regulations, 14 CFR 241.

Delta requests confidential treatment of the acquisition and retirement cost data on its Schedule B-7 contained in Columns 10 (Cost), 11 (Amortized/Depreciated Cost) and 12 (Realization). Delta has deleted the aforementioned information from its public filing of its Schedule B-7 and has filed a sealed envelope enclosing unredacted copies of Delta's Schedule, together with this Motion, with the Office of Airline Statistics.

The information for which Delta is requesting confidential treatment falls within Exemption 3 of the Freedom of Information Act 5 U.S.C. § 552(b)(3), which exempts from disclosure information required by statute to be withheld. Exemption 3 provides that:

(b) This section does not apply to matters that are . . .

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(3) specifically exempted from disclosure by statute (other than section 552(b) of this title), provided that such statute (A) requires that the matters to be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

Section 40115 of Title 49 of the United States Code, formerly Section 1104 of the Federal Aviation Act, provides that the Secretary of Transportation, upon motion, shall order information withheld from public disclosure when disclosure of the information would "have an adverse effect on the competitive position of an air carrier in foreign air transportation." The Department has previously found that the aircraft data reported on Form 41 Schedule B-7 for which Delta herein seeks confidential treatment would produce the harm specified in Section 40115.<sup>1</sup>

The Department, in granting confidentiality to United, stated:

United competes with foreign air carriers that do not report information about the cost of their individual airframes and aircraft engines. This lack of available aircraft cost information from foreign air carriers creates an environment where foreign carriers are able to access U.S. carrier aircraft cost information from the Department's public records, but U.S. carriers are unable to access comparable data for their foreign competitors. This lack of reciprocal access erodes the competitiveness of United vis a vis its foreign competitors. Therefore, the release of aircraft inventory cost data reported on United's Form 41 Schedule B-7 . . . would

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<sup>1</sup> See e.g., Letter of Office of Airline Statistics granting Motion of United Airlines, Inc., dated December 29, 1993 (Docket 48726). The Department also granted confidential treatment to Schedules B-7 of American (by letter dated November 1, 1993, Docket 48800) and Delta (by letter dated March 29, 1993, Docket 48649).

produce the harm specified in Section 1104. Consequently this information will be withheld from disclosure under Exemption 3 of FOIA and Section 1104 of the Act.

Like United, Delta competes with foreign carriers that do not report information about the cost of their airframes and aircraft engines yet are free to obtain U.S. carrier information from the Department. It would be damaging to Delta to require it to divulge to its non-reporting foreign flag competitors the fruits of its competitive efforts with aircraft manufacturers to secure the best possible purchase price.<sup>2</sup>

The Department, when deciding United's confidentiality motion, granted United a ten-year confidential period beginning on the date the information was required to be filed pursuant to 14 CFR 241.22(a). Delta deserves to be treated no less favorably with respect to the sealed Schedule B-7 attached hereto.

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<sup>2</sup> Delta also submits that the information sought to be withheld falls within Exemption 4 from the Freedom of Information Act, 5 U.S.C. § 552(b)(4), which provides protection from disclosure for "trade secrets and commercial or financial information obtained from a person and privileged or confidential . . . ." The requested information contained in Delta's Schedule B-7 satisfy all three elements required for protection under Exemption 4.

WHEREFORE, Delta requests that the Department, pursuant to 14 CFR 302.12 and 5 U.S.C. § 552(b)(3) and (4), withhold from public disclosure the information contained in columns 10-12 of Delta's Form 41, Schedule B-7 for a period of not less than ten years.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. Van der Bellen".

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